

## THE LAW ENFORCEMENT AGAINST ILLEGAL FISHING IN THE INDONESIAN EXCLUSIVE ECONOMIC ZONE (ZEEI) NORTH NATUNA

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### ABSTRACT

Illegal fishing is a serious threat to the sustainability of marine resources in the Indonesian Exclusive Economic Zone (ZEEI), especially in the North Natuna region. This research aims to examine the regulations adopted by the Indonesian Government, regarding state boundaries in the North Natuna region which intersect with the sovereignty of other countries as well as the law enforcement process in the context of illegal fishing in the Indonesian Exclusive Economic Zone. The research method used is normative legal research in the form of library research with a conceptual approach and a statutory approach. The data sources used are statutory regulations and other literature related to the authority of the Indonesian Navy in enforcing the law regarding the crime of illegal fishing in North Natuna. The research results found that the state must act wisely and appropriately to ensure that its sovereign territory is maintained and protected from various kinds of potential disturbances that threaten, in this case illegal fishing in North Natuna. In an effort to resolve the problem of illegal fishing in the North Natuna Indonesian Exclusive Economic Zone (ZEEI), it is necessary to emphasize the diplomatic aspects carried out by the Indonesian Navy towards countries whose territories intersect on international borders. The use of the military as a last resort to protect the sovereign territory of the Unitary State of the Republic of Indonesia, in this case becomes a concept about how the Indonesian state respects the sovereignty of other countries.

**Keywords:** Illegal Fishing, Law Enforcement, TNI AL, North Natuna.

### 1. INTRODUCTION

As an archipelago and maritime country, Indonesia certainly has the right to territorial boundaries that have been determined internationally by the United Nations (UN). Even though legally implementing UNCLOS 1982, in fact Indonesia remains one of the countries whose territorial waters are often violated. Specifically, violations of Indonesia's territorial waters often occur within the borders of the Kalimantan Islands. As we all know, Indonesia's territory in Kalimantan has borders that directly intersect with the borders of other countries. There are at least 4 countries that share direct and indirect borders with Indonesia on the island of Kalimantan. These countries include Malaysia, Brunei Darussalam, Singapore and the Philippines.

The large number of countries that share Indonesia's territorial waters means that Indonesia must work harder to protect its territorial waters.

Because in recent years, Indonesia has experienced many violations of territorial boundaries in the ocean. This violation is certainly detrimental to Indonesia, because it occurred in an area that falls under state sovereignty and government jurisdiction. Violations of Indonesia's territorial waters are increasingly occurring in the Exclusive Economic Zone (EEZ).

The Exclusive Economic Zone (EEZ) gives Indonesia the right to explore and exploit natural resources within the Exclusive Economic Zone (EEZ). As territorial boundaries that provide sovereign rights and jurisdiction, if there is a violation of the Exclusive Economic Zone (EEZ), Article 111 of UNCLOS 1982 allows for immediate pursuit (right of hot pursuit) of ships suspected of violating territorial boundaries. However, this right certainly cannot be exercised beyond the limits of the Exclusive Economic Zone (EEZ), which is only measured no more than 200 nautical miles from the

baseline where the width of the territorial sea is measured.

Problems between Indonesia and the People's Republic of China (PRC) in the context of ownership status of the South China Sea (SCS), often occur in the Natuna region, which geographically is in direct contact with the South China Sea (SCS) region. This condition occurs because the North Natuna sea area, which is under Indonesian jurisdiction, intersects with China's Nine Dash Line claim. In practical juridical terms, the Indonesian Government has actually submitted a diplomatic note of protest against the Chinese Ambassador for the deliberate collision of a Chinese Coast Guard Ship in order to free Chinese fishermen who would be arrested by the Indonesian Government when they were proven to have violated their Exclusive Economic Zone (EEZ) territory. Indonesia.

Apart from these problems, the problem that most frequently occurs in the context of law enforcement against illegal fishing in the North Natuna Indonesian Exclusive Economic Zone (ZEEI) is the problem of violations of territorial waters of state jurisdiction by unscrupulous Malaysian fishermen. As happened in November 2020, where the Indonesian Navy (TNI AL) arrested three foreign vessels belonging to Malaysian fishermen with the initials PKFB 1223, PKFB 1921, and FKPB 1928 because they were proven to be carrying out illegal fishing in the waters of the Malacca Strait. The same problem actually occurs frequently and has become one of the causes of political tension between countries, as happened in 2016 when the Indonesian Navy (TNI AL) arrested a Malaysian fishing boat which was proven to have stolen fish weighing 750 kilograms in Indonesian waters. Such problems are of course contradictory to the requirements that exist in the defense and security system of the Republic of Indonesia.

Based on these problems, this research was carried out. The Indonesian National Army, Navy, as one of the troops under the auspices of the Indonesian National Army (TNI), certainly has the authority to uphold Indonesia's national sovereignty. In line with what is explained in Article 30 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In this article it is emphasized that the Indonesian National Army consists of the Army, Navy and Air Force and is tasked with safeguarding and maintaining national unity and sovereignty. So specifically, this research seeks to examine the role of the Indonesian National Army and Navy in maintaining the integration and sovereignty of Indonesia's free waters within the Exclusive Economic Zone (EEZ) from the perspective of international law.

## **2. LITERATURE REVIEW**

### **2.1 EEZ concept**

The Exclusive Economic Zone (EEZ) is one of the territorial boundaries in the international waters system. In line with various territorial boundary concepts that exist in the international legal system, the Exclusive Economic Zone (EEZ) also has a long historical record in the international world. The concept of the Exclusive Economic Zone (EEZ) was first implemented by Kenya, an African country, in 1971. Kenya's policy to implement the Exclusive Economic Zone (EEZ) at that time was implemented when the activities of the Asian African Legal Constitutive Committee were underway. It was only in 1971 that the concept of the Exclusive Economic Zone (EEZ) proposed by Kenya was brought into the activities of the UN Seabed Committee.

After being officially brought to the UN routine agenda in 1972, the concept of the Exclusive Economic Zone (EEZ) received a lot of support and great attention from several Asian and African countries. Only after that, countries in the Americas followed the same trend as that which occurred in several Asian and African countries. The concept of the Exclusive Economic Zone (EEZ) was later fully accepted by members of UNCLOS (United Nations Convention on the Law of the Sea). Only then did many countries recognize the concept of Exclusive Economic Zones (EEZ) in UNCLOS (United Nations Convention on the Law of the Sea).

### **2.2 State Sovereignty and State Jurisdiction**

The word state in Indonesian is the equivalent of the word *staat* (Dutch) or *state* (English) and is an absorption from Greek, namely the word *status* or *statum* which was then converted into the Latin form *status civitas* or *status republicae* which means state. In Sanskrit, state is thought to come from the word *nagari* or *Negeri* which means city. The Big Indonesian Dictionary (KBBI) explains that the state is an institution organized in one area and led by a ruler with legitimacy that is obeyed by the population or people. Such a linguistic understanding of the definition of state is certainly not capable of explaining the definition of state comprehensively.

Control over a territory by a state literally indicates the legitimacy of independence or sovereignty. This is in line with the elements that make up a state, which were agreed upon in the 1993 Montevideo convention. In this case, the 1993 Montevideo convention states that a state must have a permanent population, a territorial size with clear boundaries, a strong supreme management authority, and capacity to carry out diplomacy with other countries. The aspect of sovereignty in the context of the founding of a country can literally be

interpreted as the power of state institutions to provide guarantees and certainty in the form of protection for its citizens.

### 2.3 National Defense Law

National defense is a concept regarding the use of all existing resources in a country to maintain the existence of that country. Apart from that, national defense or national resilience is also a form of supremacy of citizens' human rights to live peacefully and free from colonialism by any country. National defense is a joint force (civil and military) organized by a country to guarantee its territorial integrity. In this way, Indonesia's national defense is not carried out only by military means, but is carried out in collaboration between military and non-military forces

### 2.4 Authority of the Indonesian Navy

The Indonesian National Army Navy (TNI AL) is one of the forces under the auspices of the Indonesian National Army (TNI). Constitutionally, the task of the Indonesian Navy (TNI AL) is to protect the country's defense and sovereignty from various threats that have the potential to endanger the unity and integrity of the country. However, this task is of course still too general and does not specifically explain the authority exercised by the Indonesian Navy (TNI AL). Regarding the duties and authority of the Indonesian Navy (TNI AL), this is specifically explained in Law Number 34 of 2004 concerning the Indonesian National Army.

### 2.5 Obligations and Rights of States Regarding Ratified International Agreements

Law is an important aspect whose implementation and development become a concrete dimension regarding the implementation of the constitutional system. This happens because, in a legal state, law is a concept related to coercive rules regarding prohibited behavior and can be threatened with punishment if proven legally in court. As a fundamental value that lives in social society, law cannot be separated concretely from other norms that live and develop in society.

In general, the ratification carried out by the Government aims to adjust existing conditions in the field. In this case, the state has concretely carried out several ratifications, which aim to fill the legal vacuum. It needs to be understood that the ratification process carried out in the national legal system requires a long process involving the executive and legislative institutions. As explained in Article 11 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the President in making other international agreements that have broad and fundamental consequences for the lives of the

people related to the state's financial burden, and/or requires changes or The formation of laws must be approved by the House of Representatives. Based on this legal basis, it can be understood that ratified international law will give rise to legal consequences in the form of implementation of obligations under the ratified article or agreement.

### 2.6 Indonesian Maritime Territory Law Number 6 of 1996

Indonesia's territorial waters are one of the largest territorial waters in the world, with a total national territorial waters of 3.2 million km<sup>2</sup>. At the administrative level, Indonesia's territorial waters are spread out in the form of 42 cities and 181 regencies located on the coast and 47 coastal cities throughout Indonesia which are service centers for socio-economic activities. The magnitude of such potential in this case is certainly a value that needs to be developed strategically. The complexity of dividing Indonesia's territory, at a conceptual theoretical level, is an effort to facilitate the maintenance of security and safeguarding Indonesia's state sovereignty. This value then becomes the background for the theoretical study explained in this research analysis.

### 2.7 ZEEI Law

In Article 2 of Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone, it is explained that the Indonesian Exclusive Economic Zone is a route outside and bordering the Indonesian territorial sea as determined based on the applicable Law concerning Indonesian waters which includes the seabed and the land beneath it. , and the water above it with an outer limit of 200 (two hundred) nautical miles measured from the Indonesian territorial sea baseline. However, it needs to be understood that the boundaries regarding the Indonesian Exclusive Economic Zone (ZEEI), are not always static and can be adjusted to the situation and conditions that exist in the field. As explained in Article 3 paragraphs (1) and (2) of Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone. Such a concrete realization of the Indonesian Exclusive Economic Zone (ZEEI) occurs within the territorial boundaries between Indonesia and Malaysia, Singapore, Brunei Darussalam, Timor Leste, Australia, and also in this case Papua New Guinea.

### 2.8 Law Enforcement at Sea

The law enforcement process involves all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable legal rules means he is carrying out or enforcing legal rules. In a narrow sense, from the perspective of the subject, law enforcement is only

defined as the efforts of certain law enforcement officials to guarantee and ensure that a legal rule operates as it should. In ensuring the upholding of the law, if necessary, law enforcement officials are permitted to use force.

This understanding is constitutionally confirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This concept of the rule of law (*rechtstaat*) adopted by Indonesia later became the basis for various policies to enforce the law. The philosophical basis for law enforcement is of course about human nature itself. As social creatures who often interact with one another, humans in this case have the characteristics of being wolves to other humans or in this case, can also be called *homo homini lupus*. The nature of humans being wolves to other humans indicates that humans in their social practices can make various mistakes intentionally to achieve their desired goals.

### 3. RESEARCH METHODS

#### 3.1 Research Procedures

Research conducted using normative legal research methods. In some literature, normative legal research is also called normative legal research (English), normative juridic onderzoek (Dutch), and dogmatic legal research. Terminologically, experts define normative legal research from various perspectives. Wiradipradja, defines normative legal research as a legal discipline that aims to study, maintain and develop positive legal buildings based on human logic.

Based on the definition of normative legal research from an etymological perspective, it can be concluded comprehensively that what is meant by normative legal research methods is research on law through the study of legal regulations, principles, or legal doctrines that are believed by the researcher and aim to produce arguments. or a new paradigm to solve a problem.

#### 3.2 Data Collection Techniques

The source of this research comes from statutory law, principles, theories and legal doctrine in the form of documents that have relevance to the authority of Indonesian Navy helicopters in carrying out law enforcement against ships that have helicopter landing sites in the territory of the Republic of Indonesia. Specifically, the data sources in this research are classified into primary data sources and secondary data sources.

The primary data source used is the legal system which is relevant to the main tasks and functions of the Indonesian National Army (TNI). The secondary data source used to conduct research is a secondary data source that has relevance to the authority of the Indonesian Navy (TNI AL) to uphold

state sovereignty in the exclusive economic zone in North Natuna based on an international legal perspective.

### 3.3 Technical Data Analysis

This research uses qualitative methods as the analysis method. Qualitative methods are understood as analytical procedures that are explained in descriptive form in the form of written and spoken words from observed and researched data sources. In the qualitative method, the researcher is the key instrument of the research itself. This research also applies Soft System Methodology (SSM), as a paradigm related to finding recommendations for improvement or solving a problem by comparing the thinking system with facts that exist in the real world.

## 4. ANALYSIS AND DISCUSSION

### 4.1 Setting Of The North Natuna Region As A State Border

#### 4.1.1 Changing the name of the South China Sea to the North Natuna Sea.

The South China Sea area includes the waters and land of a group of two large islands, namely the Spratly and Paracels Islands, as well as the banks of the Macclesfield River and Scarborough Reef which stretches widely from Singapore starting from the Malacca Strait to the Taiwan Strait. The South China Sea is a body of water that has a strategic position in Southeast Asia and East Asia. This sea is the main trade route from the Middle East to Southeast Asia and East Asia. Apart from its strategic position, the South China Sea is also rich in oil and gas resources. If viewed from the perspective of the interests of shipping traffic routes as well as political, defense, and security aspects, as well as economic aspects in the form of natural resource wealth in the region, of course, the waters of the South China Sea are a favorite and have the potential for conflicts of interest between countries.

Based on a report by the American Energy Information Administration, the PRC estimates that there are oil reserves there of 213 billion barrels, or around 10 times the national reserves of the United States (US). Meanwhile, US scientists estimate that there are around 28 billion barrels of oil in the South China Sea region. The EIA informed that the largest natural resources reserves there probably come from natural gas, which is estimated to be around 900 trillion cubic feet. In addition, the waters of the South China Sea region are the main shipping routes and a source of fishing for the livelihoods of many people from various countries located in the surrounding areas.

There are at least 3 things that make the South China Sea a water area that is prone to major conflicts today and in the future. First, the South

China Sea is a water area with abundant natural resource potential (SDA), especially oil and other energy sources, with several groups of islands scattered around it, which are the subject of competing claims for several countries around the area, such as China, Vietnam, Philippines, Taiwan, Malaysia and Brunei Darussalam. Second, because it is located on the international shipping route that passes through the Malacca Strait, one of the busiest in the world, and is a trade route from Europe to Asia and America to Asia and vice versa, through the territorial waters of countries in the world. In at least 3 important regions, namely Southeast Asia, East Asia and Asia-Pacific, so, apart from the claimant countries, countries located around the South China Sea, such as Indonesia and Singapore, even the United States (US), have an interest in each moment for maintaining stability and security in the South China Sea.

In the strategic waters of the South China Sea, Indonesia certainly has interests, including economic and defense interests. Indonesia's interest in the defense sector is that if the escalation of disputes in the South China Sea increases and becomes heated, then as the largest country in the Southeast Asia region, Indonesia has a responsibility for regional security. This is as mandated in the Preamble to the 1945 Constitution, namely participating in maintaining world order.

On July 12 2016, the International Court of Arbitration or Permanent Court of Arbitration (PCA) made a decision regarding the dispute in the South China Sea filed by the Philippines against the People's Republic of China. The PRC also rejected the PCA decision. The main case filed by the Philippines, especially the invalidity of historic rights and Nine Dotted Line claims and the classification of maritime features, actually has direct implications for the region, especially the claimant countries, namely Vietnam, Malaysia and Brunei, especially related to the invalidity of historic rights and Nine Dotted Line claims. Indonesia, which is not a claimant, has in fact clashed with the PRC, such as in the incident involving the capture of a PRC fishing boat in Indonesia's Exclusive Economic Zone (EEZ) so far. The traditional fishing ground and Nine Dotted Line claims that had been claimed by the PRC have been declared invalid by the PCA decision.

Furthermore, discussing the interests of the world order to maintain regional stability, overlapping claims in SCS waters often cause tension and have the potential to cause security instability in the region. Seeing developments in the current strategic environment, Indonesia has finally updated its waters data by adding the name North Natuna Sea to the 2017 edition of the NKRI Map. Naming the North Natuna Sea does not mean eliminating the name South China Sea. The name South China Sea is still on the map, but it is located further north.

The national regulations regarding name changes that form the legal basis are:

- a. Law number 5 of 1983 concerning the Indonesian Exclusive Economic Zone
- b. Law number 6 of 1996 concerning Indonesian Waters
- c. Presidential Regulation number 94 of 2011 concerning Geospatial Information Agency
- d. Presidential Decree number 288 of 1968 concerning ratification of the International Hydrographic Organization
- e. Minister of Home Affairs Regulation number 39 of 2008 concerning general guidelines for standardizing topographic names
- f. Government Regulation number 61 of 1998 concerning the list of geographical coordinates of the baseline points of the Indonesian archipelago in the Natuna Sea.

The authorities in charge of international name changes are the United Nations Group of Experts on Geographical Names (hereinafter referred to as UNGEGN) and also the International Hydrographic Organization (hereinafter referred to as IHO). Meanwhile, Indonesia has established a body or authority with the authority to regulate national name changes, namely the Geospatial Information Agency (hereinafter referred to as BIG) and the Naval Hydrographic and Oceanographic Center (hereinafter referred to as PUSHIDROSAL).

#### **4.1.2 UNCLOS 1982 Perspective on Illegal Fishing.**

The main target of the 1982 Law of the Sea Convention (UNCLOS III) as stated by the Chairman of UNCLOS, namely Mr. T.T.B. Koh at the last hearing on 10 December 1982 (Document SEA/514), as follows:

- a. The Convention will encourage the maintenance of international peace and security despite the many conflicting claims of coastal countries, but universally agreed boundaries regarding the Territorial Sea, Contiguous Zone, Exclusive Economic Zone and Continental Shelf.
- b. The interests of the international community in terms of freedom of navigation in maritime waters will be facilitated by compromises regarding the status of the Exclusive Economic Zone, the legal regime of innocent passage through the Territorial Sea, the legal regime of transit passage through straits used for international shipping, and the legal regime archipelagic sea lanes.
- c. The interest of the international community in the preservation and utilization of marine biological resources will be enhanced through serious implementation of the provisions of the convention relating to the Exclusive Economic Zone.
- d. Important new provisions have been made to protect and preserve the marine environment from pollution.

e. The Convention contains new provisions regarding marine scientific research that seek an appropriate balance between the interests of countries conducting research and the interests of coastal countries in the Exclusive Economic Zone and on the Continental Shelf.

f. The interests of the international community in terms of peaceful resolution of disputes and preventing the use of violence in resolving international disputes will be carried out with a mandatory dispute resolution system as regulated in the convention.

g. The principle that the riches of the deep seabed are the common heritage of mankind has been spelled out in institutions and agreements that are just and enforceable.

h. Elements of international equality can be found in UNCLOS III such as sharing of profits on the Continental Shelf beyond the 200 mile limit, which provides access to landlocked countries and countries whose geographical conditions are unfavorable to the biological resources of the land. Exclusive Economic Zones of neighboring countries, relations between coastal fishermen and long-distance fishermen, and the sharing of profits from the exploitation of natural resources on the seabed.

UNCLOS 1982 established several maritime legal regimes that cover the territories and rights of states at sea. Some of the main maritime law regimes include:

a. Territorial Zone: The territorial zone is the sea area located around the coastal baseline. The width of the territorial zone is 12 nautical miles (approximately 22.2 kilometers) measured from the baseline. The coastal state has full sovereign rights over its territorial zone, including the right to establish and enforce laws there.

b. Exclusive Economic Zone (EEZ): EEZ is a sea area located outside the territorial zone and does not exceed 200 nautical miles from the coastline. The coastal state has exclusive rights to the exploitation of natural resources within its EEZ, including fish and other natural resources. The rights of coastal states within the EEZ are recognized and respected, but there are freedom of navigation and other rights for other states within the EEZ.

c. High Seas: The high seas are sea areas located outside the territorial zone and EEZ. All states have equal rights to use the high seas and the right to freedom of navigation therein.

d. Continental Shelf: The Continental Shelf is the seabed and subsoil located outside the territorial zone up to a limit of 200 nautical miles from the coastline. Coastal states have exclusive rights to exploit the natural resources of their Continental Shelf.

e. International Management Zone (International Seabed Area): The International Management Zone covers the seabed and subsoil outside national jurisdictional boundaries and is intended for the

benefit of all humans. The International Seabed Authority (ISA) is responsible for resource management in the International Management Zone.

The EEZ area according to Article 57 of the United Nations Convention On The Law Of The Sea 1982 (UNCLOS) is an area outside the territorial sea whose width may not exceed 200 miles measured from the baseline used to measure the territorial sea. In the EEZ area, sovereign rights apply to coastal states, namely to carry out exploration, exploitation, conservation and management of natural resources, air flights, the establishment and use of artificial islands, scientific research, and the planting of cables and pipelines. Indonesia has regulated ZEEI through Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone (UU ZEEI), the formation of the ZEEI Law is a juridical implementation of the expansion of maritime areas, especially regarding economic conditions in management, supervision and preservation, so that efforts to improve the nation's welfare by utilizing marine natural resources can be implemented. Indonesia has also ratified the 1982 Law of the Sea Convention with Law Number 17 of 1985 concerning Ratification of the 1982 Law of the Sea Convention.

According to Law no. 6 of 1996, Indonesia's territorial waters include territorial seas, archipelagic waters and also inland waters. This was later reaffirmed by Law no. 32 of 2014 concerning Maritime Affairs (Marine Law). The Marine Law confirms the division of sea areas, as does the Water Law which divides Indonesia's sea areas. In Article 7 of the Maritime Law, it is explained that Indonesia's sovereignty as an archipelago country covers land areas, inland waters, archipelagic waters, territorial seas, including the air space above them, the seabed, the land beneath them, and the natural resources contained therein. However, Indonesia's sovereignty is subject to statutory regulations and the 1982 UNCLOS international maritime law convention.

In UNCLOS, the problem of illegal, unreported, and unregulated (IUU) fishing is regulated in several articles. In Article 58 of UNCLOS 1982 which regulates the rights and obligations of other countries in the exclusive economic zone, all countries, both coastal and non-coastal countries, can participate in enjoying, subject to the applicable provisions, namely, freedom of navigation and overflight, as well as freedom of landfall, undersea cables and pipelines referred to in article 87 and other uses of the sea lawful under international law which relate to these freedoms, such as uses of the sea related to the operation of ships, aircraft and undersea cables and pipes, and in line with other provisions of this Convention.

According to Article 73 Enforcement of coastal State laws and regulations. Coastal states can exercise their sovereign rights to carry out exploration, exploitation, conservation and

management of biological resources in the exclusive economic zone and take actions deemed necessary, including boarding ships, inspecting, arresting and carrying out judicial proceedings. Regarding the practice of illegal fishing in territorial waters, the involvement of foreign parties in fish theft is classified into two types, namely: First, semi-legal theft, namely fish theft carried out by foreign vessels using legal fishing permits owned by local entrepreneurs, using vessels with local flags. or the flag of another country. Practices like this are categorized as illegal fishing because apart from catching fish in the waters of other countries, perpetrators of illegal fishing also send fish catches without going through the process of landing fish in legal areas. This kind of practice is called the practice of "borrowing the flag" or Flag of Convenience (FOC). Second, purely illegal theft, namely the fishing process carried out by foreign fishermen and ships using their own flags to catch fish in the territory of a country. However, this criminal act of illegal fishing can not only be carried out by foreign parties but also by fishermen and local entrepreneurs. Illegal fishing carried out by fishermen or local entrepreneurs can be classified into three groups, namely: First, fishing vessels with Indonesian flags that are former foreign fishing vessels whose documents are fake or do not even have a permit; Second, Indonesian fishing vessels (KII) with documents that are "asphalt/original but fake", for example, the official who issued the document is not an authorized official or the document is fake; and Indonesian Fishing Vessels (KII) which are not equipped with any documents at all, this means fishing without a permit.

#### 4.1.3 Law Enforcement Against Illegal Fishing in National Law

In connection with the division of Indonesia's territory based on the shape of the earth's surface, this discussion has close relevance to Law Number 6 of 1996 concerning Indonesian Waters. This section specifically only contains one article consisting of the following four paragraphs:

a. Indonesian territorial waters include Indonesian territorial seas, archipelagic waters and inland waters.

b. The Indonesian Territorial Sea is a sea lane 12 (twelve) nautical miles wide measured from the baseline of the Indonesian archipelago as intended in Article 5.

c. The waters of the Indonesian archipelago are all waters located on the inside of the straight baseline of the archipelago without regard to depth or distance from the coast

d. Indonesian inland waters are all waters located on the land side of the low water line of Indonesian coasts, including the depth of all parts of the waters located on the land side of a closing line as intended in Article 7.

The discussion about Indonesia's territorial waters, in this case, will become more complex in the following study:

a. Indonesia and Singapore have territorial sea sovereignty border problems, due to the massive reclamation process carried out by Singapore.

b. Indonesia and Malaysia have problems regarding understanding the maritime regime, in the northern areas of the Malacca Strait, Singapore Strait and South China Sea.

c. Indonesia and the Philippines have different concepts of maritime boundaries, due to different national provisions. Where in this case Indonesia has not determined clear sea line boundaries and the Philippines has determined clear sea line boundaries in its law.

d. Indonesia and Australia have problems with differences in the boundaries of the continental shelf and the boundaries of the Exclusive Economic Zone (EEZ), after the independence of Timor Leste through a referendum held in 1999.

e. Indonesia and Papua New Guinea (PNG) have a bilateral agreement on land and water sovereignty boundaries. However, the issue of the similarity of several cultural aspects is a value that is very vulnerable to generating conflict, through a series of traditional cultural claims that have developed from generation to generation among Papuan society in general.

f. Indonesia and Vietnam have problems regarding territorial boundaries, because geographically the waters on Sekatung Island, Natuna Islands and Vietnam's Kondor Island are no more than 245 Nm apart.

g. Indonesia and the PRC also have different views regarding water boundaries, especially in the Natuna waters.

h. Indonesia and India also have the potential for conflict over territorial waters around the Andaman and Nicobar Islands, which are traditionally frequented by Acehnese fishermen to catch fish.

i. Indonesia and Palau also do not agree on the EEZ boundaries of the two countries. especially on the Asian Islands and Mapia Islands (RI region) which are located in the north of Papua.

j. Indonesia and Timor Leste (Timor Leste) do not yet have a maritime baras agreement.

UNCLOS 1982 which regulates law enforcement against Illegal Fishing in the Exclusive Economic Zone, in Indonesia itself has regulated law enforcement against Illegal Fishing. Law enforcement regarding Illegal Fishing in Indonesia is contained in Law no. 5 of 1983 concerning the Indonesian Exclusive Economic Zone in Article 13.

UNCLOS 1982 as a provision of international law generally regulates law enforcement in the territorial sea and EEZ of a country, but does not explicitly regulate the criminal act of illegal fishing. The implementation of UNCLOS

1982 in national law is regulated in more detail in Law no. 6 of 1996 concerning Indonesian Waters concerning Indonesian maritime areas, Law no. 32 of 2014 concerning Maritime Affairs and Illegal fishing are also regulated in Law no. 5 of 1983 concerning the Indonesian Exclusive Economic Zone which regulates fish resource utilization activities in the EEZ which is implemented in the Fisheries Law. However, there are still several problems such as overlapping regulations and too many policy makers at sea, including in terms of implementing Illegal Fishing enforcement.

## 4.2 Enforcement Of Illegal Fishing Laws By The TNI AL In The Indonesian Exclusive Economic Zone In North Natuna

### 4.2.1 Lexical Theoretical Understanding of the Crime of Illegal Fishing

Etymologically, the term criminal act in Indonesian is explained as the equivalent of the words *strafbaar feit* or *delict* in Dutch criminal law. The term *delict* in the Dutch criminal law system itself comes from the Latin word *delictum delicta*. Meanwhile, the term *strafbaar feit* in Dutch consists of the word *strafbaar* which means the potential for receiving a punishment and the word *feit* which means part of a fact or reality (*een gedeelte van de werkelijkheid*) and then combined into one sentence which means an action that if carried out can be sentenced to a penalty. Criminal acts are generally defined as wrongful behavior and must be punished for the wrongdoing. In Andi Zainal Abidin's understanding, it is explained that criminal acts comprehensively contain elements of acts that are prohibited and punishable by criminal law (*acta reus*) as well as the obligation to be responsible (*mens rea*).

The term illegal fishing itself is just starting to become popularly used in the national fisheries and maritime law enforcement system, after being used in the Brief Report of the Working Meeting of Commission III DPR RI with the Police of the Republic of Indonesia (Legal, Legislation, Human Rights and Security Sector). The term illegal fishing is used by National Police Chief, together with the terms illegal logging and illegal mining. In linguistic or etymological terms, illegal fishing comes from the words illegal which means unofficial and fishing which means fishing which is starting to become popular, then understood by Marine Resources Supervision and Fisheries Ministry of Maritime Affairs and Fisheries in the concept of illegal, unreported, and unregulated (IUU) fishing. Where IUU fishing is then understood as a form of illegal fishing activity, which is not regulated by regulations or law and whose activities are not reported to the institution or management agency. recognized by the state.

If analyzed by emphasizing the use of the concept of Illegal, Unreported, and Unregulated (IUU) fishing, then the form of illegal fishing is in the following three forms:

- a. Fishing that has never been reported properly to the competent authorities
- b. Fishing that is not in line with statutory regulations
- c. Fishing that is not carried out in the territory of the country concerned or in a more special language in this case is an illegal territory
- d. Use of equipment that is not in line with statutory regulations

### 4.2.2 Law Enforcement Process Against Illegal Fishing in the Indonesian Exclusive Economic Zone (ZEEI) in North Natuna

In relation to the law enforcement process for the criminal act of illegal fishing in the Indonesian Exclusive Economic Zone (ZEEI) in North Natuna, in this case it will certainly have far more implications than the enforcement of criminal acts in other regions. This understanding is in line with the nature of the law enforcement process which overlaps or even has the potential to transcend national boundaries. The differences in the legal systems used in each country, in this case, certainly have big implications for the future course of society's logic.

Specifically, the aspect that is most likely to be implemented in order to advance the criminal law enforcement process for illegal fishing violations is a concept of law enforcement through a restorative justice paradigm. The concept of restorative justice in this research study is seen as a form of state presence that is based on diplomacy and will have major implications for reducing political tensions between countries within the framework of law enforcement.

This understanding is then in line with the basic value of criminal law, stated by Hart, that criminal law is a legal system that is applied to stop crime and also prevent people from committing crimes. Wilkins stated that the purpose of criminal law is to reduce the possibility of criminals from committing crimes again. Criminal law only contains threats for someone who does not comply with established values or norms. At this point, we will understand that it is mandatory to develop criminal law. One of the developments in criminal law is the application of the restorative justice paradigm. Restorative justice is also called Victim Offender Conferencing (VOM), which essentially aims to create a legal system that humanizes humans.

The restorative justice system has also been accommodated in the national legal system, as explained in Article 1 paragraph (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative

Justice. Agustinus Pohan, who classifies restorative justice in the following three forms:

- a. Encounter conception, a concept for resolving criminal acts through restorative justice by bringing together victims, perpetrators and related parties in a forum.
- b. Reparative justice, is a concept that prioritizes recovery over retaliation.
- c. Transformative conception, is a concept that makes restorative justice a way of life.

#### **4.2.3 Law Enforcement Against Illegal Fishing in the Indonesian Exclusive Economic Zone (ZEEI) in North Natuna by the Indonesian Navy**

Universally, the Navy carries out three roles, namely the military role, the police role and the diplomatic role which is based on the fact that the sea is a vehicle for the Navy's activities. The 1982 UN Convention on International Sea Law (United Nations Convention on the Law of the Sea/UNCLOS 1982) has been ratified by Indonesia with Law Number 17 of 1985, formally giving law enforcement authority to warships for various forms of criminal acts committed at and/or by sea, especially transnational crimes. In Law Number 34 of 2004 concerning the Indonesian National Army, the TNI Navy has the task of enforcing the law and maintaining security at sea as stated in article 9.

The basic authority of the Indonesian Navy in enforcing law and maintaining security in maritime areas of national jurisdiction is as follows:

- a. TZMKO. Territorial Sea and Marine Environment Prohibition Ordinance (Territoriale Zee en Maritieme Kringen Ordonantie) 1939 Stbl.1939 Number 442 Article 13
- b. Law Number 8 of 1981 concerning the Criminal Procedure Code in conjunction with Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. Law Number 8 of 1981 concerning the Criminal Procedure Code in conjunction with Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, explanation of article 17
- c. Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone (ZEEI).
- d. Law Number 17 of 1985 concerning Ratification of UNCLOS 1982
- e. Law Number 5 of 1990 concerning Conservation of Biological Resources and Ecosystems
- f. Law Number 6 of 1996 concerning Indonesian Waters
- g. Law Number 23 of 1997 concerning the Environment.
- h. Law Number 31 of 2004 concerning Fisheries
- i. Law Number 34 of 2004 concerning the Indonesian National Army.
- j. Law Number 17 of 2008 concerning Shipping

- k. Law Number 43 of 2008 concerning State Territory.

#### **4.2.4 Procedures for Implementing Enforcement by the Indonesian Navy**

Ship chasing is an effort to stop and arrest perpetrators who are suspected of committing criminal acts and fleeing, including measures of detection, recognition and target assessment. Basically, stopping a ship is carried out if there is sufficient suspicion that a violation of the law has occurred and/or to prevent a violation of the law. After the ship is stopped, the following actions are carried out:

- a. Carry out an inspection.
- b. On the Commander's orders, the ship docks with KRI/KAL or vice versa.
- c. In certain circumstances, you can use the KRI lifeboat to dock with the ship being inspected or the lifeboat of the ship being inspected to dock with the KRI/KAL (KRI must carry out surveillance of the suspected ship at a safe distance).

If there is not sufficient evidence or strong indications of a criminal act:

- a. The ship is permitted to continue sailing.
- b. In the shipping journal it is recorded that an inspection has been carried out stating the position and time.
- c. Request a written statement from the captain that no violence, damage or loss occurred during the inspection.

If there is sufficient evidence or strong indications that a criminal offense has occurred:

- a. The inspecting officer notifies the captain that a criminal act has occurred and for this reason the ship will be taken to the specified base/port.
- b. Ask the ship's captain to provide a signature on the position map, a picture of the pursuit and termination situation.
- c. The KRI/KAL Commander issues an order to take the ship and people to the specified base/port.

The Indonesian Navy is certainly very capable of carrying out law enforcement, especially against Illegal Fishing in North Natuna waters, but of course it needs to be supported by adequate facilities and infrastructure as well as adequate defense equipment. The development of defense technology in advanced countries in the 21st century is showing very high acceleration. This can be seen from the missile and anti-missile arms race that is being developed. In it, electronic technology becomes very dominant for control and communication systems. According to Major General TNI (Ret.) Poerwadi, to achieve the level of meeting the need for modern technology, there are still several obstacles in the TNI that affect it, starting from the research and development (R&D) stage to procurement.

Human resources are the main component in determining the success of R&D work. Limited quality and quantity of technology experts will only

hamper the R&D function. R&D is a bridge that connects science and technology with human interests. Therefore, R&D agencies must be supported by qualified technology experts and in sufficient numbers. Every effort and effort must be made to increase the number of technology transfer personnel (including Transfer of Technology/ToT) of a general or military nature, in accordance with the demands of the required scientific disciplines.

## 5. CONCLUSIONS AND SUGGESTIONS.

### 5.1 Conclusions

Based on the discussion regarding law enforcement against illegal fishing in the North Natuna Indonesian Exclusive Economic Zone (ZEEI), it can be understood that the state must act wisely and appropriately to ensure that its sovereign territory is maintained and protected from various kinds of potential threatening disturbances. This policy was taken in order to ensure that the existence of the state must continue to be maintained by all institutions or bodies within the state itself. All institutions in this case must act decisively, to ensure that no area is neglected in their concept of protection. In relation to the aspects of this research study, what is related to the review of the special authority related to the issue of law enforcement against illegal fishing in the Indonesian Exclusive Economic Zone (ZEEI) North Natuna is the Indonesian National Army Navy (TNI AL). This safeguard is an important aspect that must be completed by the Indonesian National Navy (TNI AL), considering that they are an official state institution that has been given special instructions to maintain the security and sovereignty of the country from various kinds of potential that endanger the nation's integration and even have the potential to destroy its existence. country.

The concept of diplomatic cooperation used by the Indonesian Navy (TNI AL) in resolving the problem of illegal fishing in the Indonesian Exclusive Economic Zone (ZEEI) North Natuna will be the basis for the state in this case prioritizing a humanist understanding rather than using pressure. military power in solving a problem. By emphasizing diplomatic efforts, the country in this case will be better able to prove that Indonesia has never attempted to carry out various attempts or attempts to violate the problem of illegal fishing in the North Natuna Indonesian Exclusive Economic Zone (ZEEI).

The diplomatic efforts used by Indonesia, in this case, must also strengthen the TNI AL's defense equipment both in quality and quantity in order to increase the deterrence effect in the North Natuna region in particular so that when diplomacy fails to take its course, the use of military force becomes the last resort to protect the sovereign territory of the Unitary State of the Republic. Indonesia.

### 5.2 Suggestions

Based on the conclusions above, suggestions that can be given in this research include:

a. Implement improvements to the law which currently does not provide clarity in implementing law enforcement against Illegal Fishing because there is still overlapping authority between stakeholders which is full of sectoral egos and pays attention to the sustainability of the ecosystem in the future where it is appropriate for fisheries management to be carried out by paying attention to development principles sustainable development so that existing natural resources can be enjoyed not only now but also for the future.

b. Strengthening *alusista*, especially the Indonesian Navy in the North Natuna waters, as a much more concrete effort to ensure that the protection of state sovereignty can be implemented better. In connection with the maritime area, it has different characteristics from land where we cannot build a fort or install stakes in the EEZ area, so in order to ensure the upholding of state rules and sovereignty, the presence of the state at sea is needed, in this case the KRI and the Indonesian Navy's *Pesud* (Naval Presence). Of course, this must be supported by continuous improvement, maintenance of *alusista* and support from the Indonesian Government.

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